*** THE HON'BLE SRI JUSTICE B. PRAKASH RAO**
AND
*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**
+ WRIT PETITION NO. 14919 OF 2000

% Dated 09.11.2006

K. Gangadhar.

…. Petitioner

Vs.

$ Andhra Pradesh State Road Transport Corporation rep.,by its Vice Chairman & Managing Director, Hyderabad and another.

…. Respondents

! Counsel for the Petitioner: Sri L. Nanda Kishsore

^ Counsel for the Respondents: Sri V.T.M. Prasad, Standing Counsel

<GIST:

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? Cases referred

[1] 1981)4 SCC 335
2 (1983(1) ALT 408
3 AIR 1956 SC 520
4 AIR 1962 SC 36
5 (1967)2 SCR 29
6 AIR 1974 SC 1
7 (2001)7 SCC 708
8 (2005)1 SCC 394
9 (1998)7 SCC 676
10 1995 Suppl. 4 SCC 584
11 (1961)2 SCR 931
12 AIR 1997 SC 128
13 2006(2) ALT 82 (D.B.)

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
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WRIT PETITION NO. 14919 OF 2000

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

"**Cosmetically unacceptable to the public**" is reason enough to deny employment to any category of posts in the Andhra Pradesh State Road Transport Corporation. This is not an

"off the cuff" remark but the official stand of the Corporation in its counter affidavit filed before this Court. Efficiency is of no consequence, it is a person's looks/physical appearance that matters. "Vitiligo", a skin disorder, wherein white/grey patches are formed in parts of the body for lack of proper pigmentation, has resulted in the petitioner being found medically unfit for appointment as a Conductor in A2 category. Lest they be subjected to the criticism that, in the guise of recruiting Conductors, the respondent Corporation is, in fact, holding a beauty pageant, the possibility of deterioration/loss of vision in the distant future is cited as a consequence of contracting "Vitiligo".

Pursuant to a notification issued by the respondents, inviting applications for the posts of Conductor, the petitioner appeared for the test and interview held on 04.03.1998 and was selected. He was subjected to a medical examination. The Medical officer, in his report dated 27.03.1998, opined that the petitioner was unfit, for being appointed to the post of Conductor, as he suffered from "extensive Vitiligo". The petitioner approached the 2nd respondent requesting that a medical examination be conducted once again, contending that he is fit to discharge the functions of a Conductor and that his skin disorder "Vitiligo" would not affect his ability to discharge the duties attached to the post. In the medical examination held again on 20.04.1998, the earlier medical opinion was reiterated. Questioning the action of the respondents in declaring him medically unfit for appointment as a Conductor, the petitioner filed W.P. No. 15813 of 1998, which was dismissed on 27.08.1998. Aggrieved thereby he filed Writ Appeal No. 122 of 1999 and the Division bench, while disposing of the appeal by its order dated 17.02.1999, observed:

"The appellant-writ petitioner who was selected for the post of Conductor Grade-II in the respondent-Corporation was denied appointment on the ground that he was found to be unfit on medical examination as he was afflicted with skin disease 'vitiligo'. In the impugned order, the learned single judge has given a direction to the respondents to consider the representation of the appellant in view of the nature of the disease.

The learned counsel for the respondent-Corporation has produced before us a paper which refers to the importance of the disease vitiligo in medical examination to be undergone by a selected candidate before recruitment. The learned Counsel for the respondents contend that the disease is considered as a disqualification for appointment for the reason that the disease will be afflicted because of lack of pigmentation of the skin and the person suffering from such disease will have photo sensitivity problem i.e, person is prone for sun burning and will likely to suffer progressive vitiligo ie., defective vision because of the depigmentation of choroide and retina, apart from the fact that the person may not be accepted cosmetically by the public. We are inclined to go into all those aspects.

In spite of the above, we hope that the respondent-Corporation will consider the representation of the petitioner sympathetically as directed by the learned single judge and, if so advised, take second opinion regarding the disease of the appellant from the experts for the purpose of recruitment.

The Writ Appeal is disposed of accordingly. No costs."

The petitioner was thereafter called upon to undergo a medical examination before the Medical Officer (Dermatology), RTC Hospital, Tarnaka. After he underwent a medical examination the petitioner was informed by the Medical Officer, in his letter dated 06.04.1999, that he was medically unfit to be appointed to the post of Conductor (A2 category). The 2nd respondent, in its proceedings dated 13.05.1999, reiterated what was stated by the Medical Officer. According to the petitioner, except passing the very same order which was passed earlier and repeating the very same observations, the respondents had neither applied their mind nor had they implemented the order of this Court which required them to consider his case sympathetically. Petitioner would submit that it was not open to a State Public Sector

Undertaking to choose employees by the colour of their skin and that the skin ailment he suffered from did not, and would not, affect his mental and physical capacities to discharge the duties of a Conductor.

In the counter-affidavit, filed on behalf of the respondent Corporation, it is stated that during the course of medical examination the petitioner was found medically unfit for appointment to the post of a Conductor (A2 category) due to extensive Vitiligo, vide medical report dated 27.03.1998, that he had again approached the Office of the Regional Manager, Nizamabad seeking re-examination, that he was again directed for re-examination on 20.04.1998 and was again found medically unfit for the post of Conductor. Reference is made to the order of the Division bench, in Writ Appeal No. 122 of 1999 dated 17.02.1999, wherein the Corporation was directed to consider the petitioner's representation sympathetically duly taking a second opinion regarding the disease of the appellant from the experts for the purpose of appointment and that, on the basis of the order of the High Court in Writ Appeal No. 122 of 1999 dated 17.02.1999, the petitioner was directed to appear for re-examination before the Executive Director (Medical), Tarnaka Hospital, Hyderabad and the Medical Officer (Dermatology) had examined the petitioner and had informed him, vide letter dated 06.04.1999, that he was considered medically unfit for the post of Conductor (A2 category). Respondents would refer to Regulation 7 of the APSRTC Recruitment Regulations and to the Medical Manual, more particularly to sub-clause (c) of Clause 4 which requires the Corporation to reject cases where conditions rendering the association of candidates with other objectionable disorders are found. As examples, Albinism and "Progressive Vitiligo" are mentioned. Respondents would state that a person afflicted with Progressive Vitiligo is prone to sunburn and likely defective vision and that, as per the rules of the Corporation, a person suffering from progressive Vitiligo was not eligible for any post in the Corporation and that any such appointment would be contrary to the rules and regulations.

Since the Medical Manual of the respondent Corporation prohibits candidates, suffering from "progressive vitiligo", from being appointed to any posts, the petitioner herein filed W.P.M.P. No. 21727 of 2006 seeking permission to amend the prayer in the writ petition to include a challenge to the validity of the conditions imposed in the Medical Manual. The amendment petition in W.P.M.P. No. 21727 of 2006, is hereby ordered.

In the affidavit, filed in support of W.P.M.P. No. 21727 of 2006, the petitioner would challenge the validity of Clause 4(c) of the Medical Manual, and to his medical invalidation, on the ground that he suffered from Vitiligo, as unconstitutional, irrational, arbitrary and in violation of Articles 14, 19(1)(g) and 21 of the Constitution of India. Petitioner would submit that the ailment he suffered from did not, in any remote manner, incapacitate him in performing his duties and that medically disqualifying his candidature was illegal. Petitioner would seek a mandamus from this Court to declare Rule 4(c)(ii) of the Medical Manual, in so far as it related to the skin ailment "Vitiligo", ultravires Articles 14, 19(1)(g) and 21 of the Constitution of India.

In the Additional Counter-affidavit, filed on behalf of the respondents, it is stated that under Regulation 7(1) of the A.P.S.R.T.C. Employees (Recruitment) Regulation 1966, no

person shall be eligible for appointment to any post in the service by direct recruitment unless he satisfies the Corporation (i) that he was of sound health, possessed active habits and was free from any bodily defect or infirmity, that according to note (1) of Regulation 7, the competent authority may, by a general or special order, specify the standards of physical fitness to be fulfilled by candidates and different standards may be prescribed for different categories of posts. It is stated that in accordance with the said Regulations candidates, who are selected for appointment to direct recruitment posts, are directed to appear before the Medical Officer of the Corporation for ascertaining their medical fitness and, based on the fitness certificate issued by the Medical Officer, appointments are made. It is stated that Medical Officers issue fitness certificates after examining the eye vision, general physique and after ascertaining whether the candidate is of sound health, whether he is free from bodily defect or infirmity and that it is only these candidates, who are considered for appointment in the services of the Corporation. With regards the petitioner's contention that, since he was interviewed on 04.03.1998 and as the Medical Manual disqualifying his candidature was issued in 1999, the conditions prescribed therein cannot have retrospective effect, respondents would state that the petitioner was examined by the Medical Officer, APSRTC Hospital, Tarnaka on 27.03.1998 and was found unfit for the A2 category post of Conductor due to extensive vitiligo, that on appeal the Executive Director (Medical) had examined him and had rejected his appeal observing that he was unfit for the post of Conductor (A2 category) due to extensive vitiligo, i.e., defective vision because of depigmentation of choroide and retina, apart from the fact that the person may not be accepted cosmetically by the public. It is stated that the Manual was published in the year 1999 for the sake of convenience of Medical Officers as well as Unit officers in the Corporation, that it had nothing to do with the instructions already in existence and that it could not be said that there were no instructions prior to the publication of the Medical manual. Reference is also made to the fact that, even before the Division Bench of this Court in W.A. No. 122 of 1999, it was contended by the Corporation that the disease was considered as a disqualification for appointment for the reason that the disease arises because of lack of pigmentation of the skin and the person suffering from such disease will have photo sensitivity problem i.e., the person is prone to sun burning and is likely to suffer progressive vitiligo. It is stated that pursuant to the directions of the Division bench, in Writ Appeal No. 122 of 1999, the petitioner was directed to appear before the Medical Officer (Dermatology) of the APSRTC Hospital, Tarnaka for a second opinion and that, on being examined by the Medical Officer, a specialist, it was confirmed that he had extensive vitiligo which was a disqualification for all categories of posts and therefore the petitioner's candidature for appointment to the post of Conductor in A2 category was rejected. Respondents would submit that pursuant to the Medical report the Regional Manager, Nizamabad, vide proceedings dated 13.05.1999, had informed the petitioner that he was not entitled for appointment as a Conductor. Respondents would deny the petitioner's contention that his medical invalidation, due to his suffering from the skin ailment vitiligo, was irrational, arbitrary and in violation of Articles 14, 19(1)(g) and 21 of the Constitution of India. According to the respondents, as per the APSRTC (Recruitment) Regulations, 1966, the Corporation had the right to appoint able

bodied persons in the service of the Corporation and persons who were not fit for appointment could not allege discrimination as the Medical Officer was the competent person to decide about the disease.

Along with the Counter-affidavit, the respondents have filed copies of the Medical certificates issued on 27.03.1998, the letter of the Medical Officer dated 06.04.1999, as also the Medical Manual. In the Medical Certificate dated 27.03.1998, it is stated that the petitioner was unfit for A2 category due to extensive vitiligo. The said certificate also contains an endorsement that the appeal preferred by him was rejected on 23.03.1998 and that he was unfit for A2 category because of extensive vitiligo. In the letter dated 06.04.1999 the Medical Officer (Dermatology) APSRTC Hospital, Tarnaka would state that the petitioner was examined on 06.04.1999 and it was confirmed that he was having extensive vitiligo which was a disqualification for all categories of posts in APSRTC as per the existing medical regulations and he was therefore considered unfit for the post of Conductor in A2 category.

Sri L.Nanda Kishore, learned counsel for the petitioner, would submit that since the medical manual came into force only in the year 1999, much after the petitioner was medically examined in March, 1998, the restrictions imposed in the medical manual does not have retrospective operation and cannot be applied to reject the petitioner's claim for appointment as conductor in A-2 category. Learned counsel would submit that Vitiligo is a skin disorder which is purely cosmetic. It is neither contagious nor does it affect the person's ability to discharge his duties. According to the learned counsel there is no scientific evidence to show that Vitiligo results in loss of vision. Learned counsel would submit that a person cannot be refused employment merely on the basis of his looks and that the petitioner, in effect, has been denied employment only on the ground that he was found "cosmetically unacceptable to the public". Learned counsel would place reliance on **Air India v. Nergesh Meerza**[1] to submit that the action of the respondents in rejecting the petitioner's candidature for appointment to the post of conductor in A.P.S.R.T.C. is wholly arbitrary and in violation of Articles 14 and 16 of the Constitution of India. Learned counsel would submit that while Clause 4(c)(ii) of the Medical Manual prohibits appointment of candidates who suffer from "Vitiligo" from being directly recruited in the Corporation, there is no provision in the regulations for termination of the services of an employee, who is already in the service of the Corporation, merely on the ground that he has contracted Vitiligo, after his employment in the respondent-Corporation. Learned counsel would submit that since all persons, suffering from 'Vitiligo', constitute one single class, a further classification of persons suffering from vitiligo, between those who seek appointment and those who are already in employment, is patently discriminatory and in violation of Articles 14 and 16 of the Constitution of India. Learned counsel would submit that Regulation 7 of the A.P.S.R.T.C. Regulations, which requires a person to be appointed to be of sound health, to possess active habits and to be free from any bodily defect or infirmity, cannot be so interpreted as to require the respondent – corporation to insist on hundred percent medical fitness without any reference to the duties to be discharged by such candidates. Learned counsel would submit that the physical appearance of an

individual has no direct nexus with the functions to be discharged as a conductor and merely because a person suffers from Vitiligo he should not be disentitled from being appointed as a conductor in the respondent corporation. Learned counsel would place reliance on **Smt. K. Indira v. State Bank of India**[2] in this regard. Learned counsel would submit that Clause 4(c)(ii) of the Medical Manual is arbitrary, discriminatory, unreasonable and ultra vires Articles 14 and 16 of the Constitution of India. Learned counsel would submit that since the petitioner satisfied all the other physical and medical standards prescribed for appointment as a conductor in the respondent – corporation, this Court should issue a mandamus to the Corporation to appoint him as a conductor.

Sri V.T.M. Prasad, learned Senior Standing Counsel for the respondent – corporation, on the other hand, would submit that the medical standards prescribed in the medical manual are but a compilation of all previous executive instructions issued by the Corporation, from time to time, and only for the sake of convenience are now compiled in the form of manual. Learned counsel would submit that these medical standards existed even when the medical examination was conducted on the petitioner in March, 1998 and as such cannot be held to have been applied retrospectively. Learned counsel would submit that the medical standards, required to be satisfied for seeking employment in the respondent – corporation, are matters of policy for the Corporation, in its wisdom, to determine and that this Court, in proceedings under Article 226 of the Constitution of India, would not sit in appeal over such policy decisions. Learned counsel would submit that since these medical standards are made uniformly applicable to all persons seeking employment in the respondent – corporation the question of discrimination does not arise. Learned counsel would submit that a conductor is always in contact with passengers and it in this context that the respondents had stated that he was found “cosmetically unacceptable to the public”. Learned counsel would submit that “Vitiligo” ultimately results in loss of vision and that the Corporation cannot be forced to take employees who are likely to lose their eye sight in future.

Before examining the rival contentions it is necessary to refer to the applicable statutory provisions and the physical and other standards prescribed in the medical manual. The APSRTC Employees Recruitment Regulations 1966, was approved by the State Government, under Section 45(1) of the Road Transport Corporation Act, 1950 and was notified in G.O.Ms. No. 780 dated 20.04.1966. These regulations apply to all classes of services under the Corporation except to the extent otherwise expressly provided thereunder. Under Regulation 2 (iii) a person is said to be appointed to a post wherein, in accordance with the Regulations, he discharges for the first time the duties attached to such posts. Clause (ix) of Regulation 2 defines “direct recruitment” to mean appointment otherwise than by promotion or transfer from any post in the service of the Corporation. Clause (xvii) of Regulation 2 defines “Selection” to mean selection of a person for appointment to a post in the service of the Corporation by the selection committee, if any, appointed for the purpose under Regulation 6 or by the appointing authority in its discretion, when no selection committee has been appointed, provided that the Regulations, as regards the method of recruitment and qualification in respect of the post for

which the selection is made, are fulfilled. Regulation 3 relates to appointment and qualifications. Under Regulation 3(1)(a), appointment to posts in the Corporation shall be made by direct recruitment. Under Regulation 3(2), the method of recruitment to each post, as specified in column 2 of Annexure-A, shall be as shown in the corresponding entry in column (3) thereof and the qualifications prescribed for each such post shall be as shown in the corresponding entry in column (4). The post of Conductor Grade II, under Class-III services, is required to be filled up by selection either by promotion or by direct recruitment. To be appointed by selection by direct recruitment the candidate must (a) have passed S.S.C. or its equivalent qualification (b) not be less than 153 cm in height and (c) be above 21 years of age and below 35 years of age on the 1st July of the year in which the recruitment is made. Under Regulation 4(1) all direct recruitment shall be made by the appointing authority from a list of approved candidates and such list shall be prepared to any general or special order of the Corporation by the selection committee, if any, appointed in this behalf. Regulation 7 relates to direct recruitment and reads as under:

7. Direct Recruitment:

No person shall be eligible for appointment to any post in the service by Direct Recruitment unless he satisfies the Corporation.

i. that he is of sound health, possesses active habits and is free from any bodily defect or infirmity;
ii. that his character and antecedents are such as to qualify him for such service; and
iii. that he has completed the age of eighteen years.

Note: (1) The Competent Authority may, by a general or special order specify the standards of physical fitness to be fulfilled by candidates and different standards may be prescribed for different categories of posts;

Regulation 9 relates to relaxation of the age limit and, under sub-regulation (1) thereof, notwithstanding anything in the Regulations the competent authority may, in exceptional circumstances and for reasons to be recorded in writing, make an order exempting any person or class of persons from the age limit prescribed therein.

The A.P.S.R.T.C. Medical Manual, 1999 was made for the guidance of staff of all departments of the respondent Corporation dealing with medical examination and allied subjects. The Manual incorporates all the essential provisions contained in the instructions and clarifications issued thereon, from time to time, in a self-contained and readily understandable form. The provisions of the manual are subject to the existing rules and orders applicable to the respondent Corporation. The Medical Manual was issued under the authority of the Vice Chairman and Managing Director of the Corporation. The main object of a medical examination, under the Medical Manual, is to ensure adequate physical standard of employees both at the time of their recruitment, promotion and then periodical check up. The Medical Manual provides that the standard of physical fitness to be adopted should make due allowance for the age and length of service of any of the candidates concerned, that no person will be deemed qualified for appointment, to the Corporation's services, who does not satisfy the appointing authority that he/she has no disease of constitutional affliction or bodily infirmity unfitting him/her or likely to unfit him/her for that service. The Medical Manual provides that

the question of fitness involves the future as well as the present and that one of the main objectives of the medical examination is to secure continuous effective service and, in the case of candidates for permanent appointment, to prevent early retirement due to medical reasons or payment in case of premature death consequent to ill health. The Medical Manual, however, notes that the question is one of the likelihood of continuous effective service and that rejection of a candidate need not be advised on account of the presence of a defect which, in only a small proportion of cases, is found to interfere with continuous effective service. Part-I of the Medical Manual prescribes the procedure for medical examination for recruitment and periodical examination of employees in the A.P.S.R.T.C. It reads as under:

1. EXAMINATION OF CANDIDATES:

For any appointment in APSRTC the candidate must pass Medical Fitness Examination. He/She must be in good health mentally, bodily and free from any defect likely to interfere for efficient performance of his/her duties. The medical examination for fitness to the candidates consists of the following:

i. General Physical Examination.
ii. Vision Test – Standards.
iii. Physical measurements as prescribed in Recruitment Regulations.

General Physical Examination:

(1). Examiners have to use their own discretion to the scope of the general physical examination in each case and judge cases on their merits taking into consideration the prospective duties of the examinees.
(2). Measurements of height, weight and chest to be recorded if specified. The Physical measurement prescribed for various posts are shown at Annexure-II. The skin, the connective tissues, and the circulatory, respiratory, digestive, nervous, genito-urinary, skeletal and muscular systems, will be subjected to such examination as is deemed necessary. The principal points attended to in general physical examination are connected with as pertaining to:

a. The condition of the heart, lungs and state of blood pressure.
b. The condition of the teeth and gums.
c. Whether there is any evidence of abdominal diseases.
d. Whether there is any hernia or tendency to hernia.
e. Whether there is any degree of hydrocele, varicocele varicose veins, piles or filariasis.
f. Whether there is free movement of joints.
g. Whether there is any inveterate skin disease.
h. Whether the hearing in each ear is good and whether there is any disease of the ear.
i. Whether there is contagious disease of the yes, or any condition likely to lead to impairment of vision like Ptosis, Proptosis, Ectropion/Entropion, Lagophthalmos, Squint (Divergent/Convergent) and Retinitis Pigmentaosa.
j. Whether there is any acute or chronic disease pointing to as impaired constitution.
k. Whether there are marks of effective vaccination.

(3). In the Examination of the candidate's hearing, speaking voice test to be employed. The examiner will speak in an ordinary conversational voice. The examinee should be at a distance of three yards and with his back to the examiner. The ears should be separately tested by the occlusion of the other ear or by the use of Barany's whistle.
(4) Candidates exhibiting the conditions noted below will be rejected irrespective of the employment sought.

a. Contageous and infectious disorders: If the condition of the candidate is found to be caused due to contagious or infectious, the sequelae arising from such disorders shall not be regarded as disqualifying unless they likely to interfere immediately or remotely with the efficient performance of the duties of the candidate appointed. The following conditions fall inter-alia under the above category.

i. Pulmonary tuberculosis.
ii. Venereal infections.
iii. Trachoma and other infectious ocular diseases.
iv. Leprosy.

b. Conditions commonly pre-disposing to invalidity or seriously enhancing the candidate's liability to occupational risks, eg.,

i. Hernia and well marked hydrocele, varicose veins or piles or filariasis provided that such conditions having been satisfactorily treated by operation, the evidence of previous existence shall not disqualify.

ii. Undescended testis, intra abdominal in position and unassociated with Inguinal Hermia, should not be a disqualification. Ectopic testis located in, NGUINAL canal abdominal wall or thigh, being more liable for torsion and trauma, should be passed fit only after examinee undergoes surgical treatment.

iii. Flat-foot, or knock-knees – except in sedentary occupations:

iv. Epilepsy

v. Asthma

vi. Otorrhea

vii. Obesity

c. Conditions rendering the association of the candidate with other objectionable disorders e.g.,

i. Repulsive inveterate skin diseases.

ii. Albinism & Progressive Vitiligo.

iii. Ozeena

iv. Foetor associated or otherwise with Pyorrhea Alveolaris.

d. Constitutional disorders commonly deemed progressive and chronic disorders liable to recurrent exacerbation of a disabling kind.

e. Severe degree of deafness.

f. Pronounced speech defects.

(5).(i). When general physical examination of an employee is carried out during service under the provisions of at Annexure-II, the examiner should satisfy himself that the employee is free from any defect likely to interfere with the efficient performance of his duties, if any such defect found can be remedied by treatment or operation, prior to final decision.

ii. Vision test – standard as at Annexure-III.

(6). The Managing Director may relax the provisions of these regulations in the case of candidate for temporary appointment to posts, other than those falling under Group O & A of the classes mentioned in Regulations.

(7). The candidates for recruitment to various services in the Corporation are classified as different groups for the purpose of medical examination are shown at Annexure-I.

II. REQUIREMENT OF MEDICAL EXAMINATION:

i. When the candidate selected for appointment to a post, he should be sent for medical examination prior to depute him/her for training.

ii. In the case of candidates to be appointed against the post for which initial training is not necessary, the medical examination should be conducted at the time of their appointment.

III VISION TEST:

Special Rules governing vision standards for candidates of various categories are given at Annexure-III.

Clause IV relates to examination of in service employees. Annexure-I relates to classification of group for medical examination and thereunder conductors are classified as A2 category. Annexure II prescribes the physical measurements for various cadres for direct recruitment as per the Recruitment Regulations and thereunder at serial No. 9 are Conductor Grade-II who must be taller than 153 cm for direct recruitment. Annexure-III relates to vision standards for various categories in the respondent Corporation and for Conductors the prescribed vision standards are as under:

Category	Class	Distant vision		Near Vision	Colour Vision	Field of Vision	Fundus
		Naked Eye	Corrected Eye				

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Conductor	A2 (Upto 30 Yrs)	6/18 Glasses	6/9 required	J1 with	Not	Normal	Normal
	31-45 Years	6/24 Glasses	6/9 required	J1 with	Not	Normal	Normal
	46 Years	6/36 6/36	6/9	J1 with	Not Glasses	Normal required	Normal

The fact that the petitioner suffers from Vitiligo is not in dispute. Clause 4(c)(ii) of the A.P.S.R.T.C. Medical Manual prescribes that conditions rendering the association of the candidate with other objectionable disorders such as Albinism & Progressive Vitiligo should result in rejection of his candidature irrespective of the employment sought. Since this clause, in the medical manual, is under challenge on the ground that it violates Articles 14 and 16 of the Constitution of India, it is necessary to first understand as to what this particular skin disorder is all about. The word 'Vitiligo' comes from Latin. The first limb 'viti' means a mark or blemish and the suffix "Ligo" is a common Latin ending meaning to "bind or cause". Thus, vitiligo means "to cause a mark or blemish". Vitiligo has existed at least as long as the recorded history of Man and, probably, even prior thereto since similar conditions are said to exist in many other animals. Reference to vitiligo patches are to be found in the Bible and in ancient Chinese and Greek texts. Vitiligo is not fatal. It has no other physical symptoms other than white patches and is largely cosmetic. The social effects of vitiligo are, however, significant. Though this skin disorder is not contagious, like several other skin disorders it is largely looked down upon by society.

Vitiligo, a common skin disorder affecting 1 to 2 percent of the population, is an autoimmune disease, a condition whereby the immune system is triggered to react against and attack the body's own tissues. It is a common skin disorder in which there is focal failure of pigmentation due to destruction of melanocytes which is thought to be mediated by immunological mechanisms. Vitiligo occurs when pigment making cells are destroyed. These skin cells are called mucous membranes and are typically found in places such as the nasal passages, retinal area, the mouth, genital and rectal areas. The condition causes patches of skin to lose their normal colour and appear more white or grey. This skin disorder appears both in men and women and in all races and countries across the globe. The condition is apparent outwardly in individuals with darker skin types in view of the contrast in colour between the individual's normal skin and the areas of the skin that suffer from a lack of proper pigmentation. The condition is not infectious and there is little risk of it spreading to others. The clinical features of "Vitiligo" are that sharply defined areas of depigmentation appear. Occasionally the depigmented areas are slightly pink at the start of the disorder. Often the depigmented patches are symmetrical, especially when the disorder is distributed over the peripheral parts of the limbs and the face. Old patterns are some times noted as, for example,

when the depigmentation occurs over the front of the neck, over the thyroid gland or on the abdomen over the site of the pancreas or on the flanks over the sites of the adrenal glands. It is much more noticeable in summer when the surrounding skin has become slightly sunburnt. It is a cosmetic problem for darkly pigmented people. The condition often starts in childhood, and either spreads, over the years, so that ultimately the skin is totally depigmented, or persists with irregular remissions and relapses. Vitiligo is more common in diabetes, thyroid disease and alopecia areata. (**Roxburgh's Common Skin Diseases 16th edition by R. Marks published by Chapman & Hall Medical**).

Butterworths Medical Dictionery 2nd Edition defines vitiligo as:-

"Idiopathic leucoderma an acquired failure of pigmentation in which sharply demarcated areas of skin become depigmented, giving a piebald appearance. Vitiligo acquisita syphilitica. Syphilitic vitiligo (see belo). Vitiligo capitis. 1. Vitiligo of the scalp with depigmentation of the hairs on the leucodermatous areas. 2. Alopecia areata. Vitiligo iridis. Small white patches seen in the iris due to depigmentation. They often follow tuberculous and herpetic iritis, and occasionally smallpox. Perinaevic vitiligo. Vitiligo surrounding a naevus. Syphilitic vitiligo. Leucoderma, especially of the neck, occurring during the secondary stage of syphilis (L, a cutaneous eruption)"

The petitioner has been diagnosed as suffering from "progressive vitiligo". **Butterworths Medical Dictionary 2nd Edition** defines 'progressive' as (1) advancing, moving forward and (2) applied to a condition or to the course of a disease, used particularly in an unfavourable sense. Thus, "progressive vitiligo" would mean, vitiligo as a skin disorder advancing over a period of time.

According to the National Institute of Arthritis and Musculoskeletal Skin Diseases (NIAMS), U.S.A, while the cause of vitiligo is not known, different theories trace it to autoimmune disorders and in certain cases to sunburn or to trigerred emotional distress. Vitiligo may also be hereditary. According to NIAMS, the disorder in most cases spreads slowly and has several treatment options. The medical therapies include topical steroid therapy, topical psoralen photochemotherapy, oral psoralen photochemotherapy and depigmentation. Among the surgical therapies include skin grafts from a person's own tissues (autologous), skin grafts using blisters, micropigmentation, autologous melanocyte transplants etc. The adjunctive therapies include sunscreens, cosmetics, counseling and support. According to the Xianchen Institute for Vitiligo, while in a very small percentage of people with vitiligo eye colour pigment may be affected, there is no data or evidence of suffering from any weakening or loss of vision due to vitiligo and that the myth of eventual blindness has no basis in fact.

Vitiligo is a common skin disorder wherein parts of the skin loose their normal colour and appear more white or grey. It is not contagious and there is no data or evidence of weakening of loss of vision and the myth of eventual blindness of a person suffering from Vitiligo has no basis in fact. This skin disorder is cosmetic in nature and has attached to it a high degree of social stigma.

Since "Vitiligo" is not contagious nor does it, in any manner, affect a person's ability to discharge his normal duties, this ailment, by itself, ought not to have been specified among the medical disorders necessitating rejection of a person's candidature for appointment in the

respondent – corporation. Clause (1) of Article 16 guarantees equality for all citizens in matters relating to employment or appointment to any office under the State. Articles 14 and 16 do not forbid classification. The principle underlying the guarantee of Article 14 is not that the same rules of law should be made applicable to all persons within the territory of India irrespective of differences of circumstances. It only means that all persons similarly circumstanced should be treated alike and there should be no discrimination between one person and another if, as regards the subject-matter of the law, their position is substantially the same. The process of classification empowers the State to determine who should be regarded as a class in relation to a law enacted on a particular subject. The classification to be valid must be rational and not arbitrary. It must not only be based on some qualities or characteristics which are to be found in all the persons grouped together, and not in others who are left out, but those qualities or characteristics must also have a reasonable nexus or relation to the object sought to be achieved. In order to pass the test of a valid classification, the twin conditions to be fulfilled are (*1*) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others, and (*2*) the differentia must have a rational nexus or relation to the object sought to be achieved.

Unless the classification is unjust on the face of it, the onus lies upon the party attacking the classification to show by placing the necessary material before the court that the said classification is unreasonable and is violative of Articles 14 and 16 of the Constitution. (**Banarsidas v. State of Uttar Pradesh**[3], **All India Station Masters' and Assistant Station Masters' Association**[9], **General Manager, Southern Railway v. Rangachari**[4], **Govind Dattatray Kelkar Vs. Chief Controller of Imports & Exports**[5] and **State of J&K Vs. Trilokinath Khose**[6]).

Classification, however, is fraught with the danger that it may produce artificial inequalities and therefore, the right to classify is hedged in with salient restraints or else, the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well marked classes characterized by different and distinct attainments. Classification, therefore, must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.

Judicial scrutiny can therefore extend to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an inquiry permissible it would be open to the Courts to substitute their own judgment for that of the legislature/rule-making authority/executive on the need to classify or the desirability of achieving a particular object. (**Triloki Nath Khosa**[6]**.** Article 14 does not insist upon classification, which is scientifically perfect or logically complete. A classification would be justified unless it is patently arbitrary. In substance, the differentia required is that it must be

real and substantial, bearing some just and reasonable relation to the object of the law. (**State of A.P. Vs. Nallamilli Rami Reddi**[7], **E.V. Chinnaiah Vs. State of A.P**[8]). The validity of the classification has to be judged on the facts and circumstances of each case. (**Trilokinath Khosa**[6], **Food Corporation of India Vs. Omprakash Sharma**[9], **E.V. Chinnaiah**[8]).

While persons who suffer from "Vitiligo" constitute a class, distinct from others who are not afflicted by this skin disorder, and the first of the twin tests for a valid classification, i.e., the classification being founded on an intelligible differentia which distinguishes those that are grouped together from others is satisfied, it is the second requirement as to whether this differentia has a rational nexus or relation to the object sought to be achieved, which needs to be examined. As stated supra, the object of prescription of medical standards and conditions of medical examination is found in Regulation 7 of the APSRTC Regulations which is to ensure that persons appointed in the Corporation are of sound health, possesses active habits and are free from bodily defect or infirmity. The requirements prescribed under Regulation - 7 must be examined on the touchstone of the functions/duties to be discharged by the employee concerned. Insistence on 100% medical fitness irrespective of the nature of the job is wholly arbitrary. The Medical Manual itself takes note of such an eventuality and provides that a candidate need not be rejected merely on account of the presence of a defect which, in only a small proportion of cases, is found to interfere with his continuous effective service. In Smt. K. Indira[2], this Court observed:-

"……. Once the petitioner is found to be fully qualified and stood in merit comparatively with the other candidates who are not selected, she cannot be classified as a different person belonging to a group not possessing the required medical fitness. The authority disqualifying her on a greater standard of medical fitness cannot escape the mischief of Art.16 by showing that she does not possess 100 per cent medical fitness. The standard of medical fitness may vary from job to job and sometimes may be prescribed for the employer and in which case those requirements must be satisfied…..

…… The medical fitness may vary from person to person. It is not possible to expect every citizen to be 100 per cent medically fit. Some times persons inherit some defects from birth and sometimes they acquire subsequently. **The employer-State should see that considering the nature of work and considering the degree of fitness, the employment is given to all citizens and the insistence of 100 per cent medical fitness irrespective of the nature of the job is wholly arbitrary and constitutes abuse of power.**

An employee required to apply a special skill may be required to prove higher standards of medical fitness. If State refuses the employment if any person suffers from eye sight using glasses, a large number of citizen have to be disqualified but if a special talent is necessary and a particular eye sight is required for a special employment the State may be justified in insisting higher standards of eye sight. Similarly if the employment requires a policy making and a special drive, there may be justification for insisting the higher standards of medical fitness. **The Insisting of 100 per cent medical fitness without referring to the nature of job constitutes clearly abuse and arbitrary exercise of the power of employment inhered in the State. After all it is the duty of the State to provide employment even to the disabled and unless the nature of the job entrusted to a particular person disqualifies him to hold the said post, the State cannot justify such denial. A complete denial of employment to persons having some health problems make them a dead weight on the society and the State should be loath to adopt such course…..**" **(emphasis supplied)**

Medical evidence placed on record reveals that, in terms of physical and mental fitness, persons afflicted with "Vitiligo" are similarly situated with others who are not so affected and possess the physical and mental fitness required for employment in the respondent corporation. No evidence to the contrary has been placed by the respondents before this

court. Classifying persons with "Vitiligo" as a group for denying employment, on the erroneous premise that they lack the standards of physical and mental fitness required for discharging the duties of a Conductor in the APSRTC, does not satisfy the second of the twin conditions for a valid classification that the differentia must have a rational nexus to the object sought to be achieved. A valid classification, whereunder persons with common characteristics are safeguarded as a group, postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily. Including persons afflicted with "Vitiligo", along with other categories of persons who are medically unfit for appointment in the Corporation, as one single homogenous class, is therefore in violation of Articles 14 and 16 of the Constitution of India.

The mere fact that Clause 4(c)(ii) of the Medical Manual is in the nature of administrative instructions, and does not have statutory force, is of no consequence since the mandate of Article 14 and 16 apply to administrative instructions also. (**Reserve Bank of India Vs. S. Jayarajan**[10]**, Gajula Dasaratha Rama Rao Vs. State of A.P**[11]). Nor is there any force in the contention that the provisions of the Medical Manual, including Clause 4(c)(ii) are matters of executive policy and cannot be subjected to judicial review under Article 226 of the Constitution of India, for it is well settled that if a policy decision is demonstrably capricious or arbitrary, is not informed by reason or suffers from the vice of discrimination or infringes any provision of the constitution it is liable to be struck down. (**Krishnan Kakkanth Vs. Govt. of Kerala** [12]). Clause 4(c)(ii) of the Medical Manual is ultravires Articles 14 and 16 of the Constitution of India. The sanitization of the Corporation, through a process of preventing entry of persons afflicted by "Vitiligo" is inhuman and without justification. Denying employment on the plea that such persons may not be "**cosmetically acceptable to the public**" is apartheid in a different form. The respondent Corporation is not holding a beauty pageant and disqualifying a person from employment on the basis of his looks or appearance smacks of perversity of a very high degree.

A similar contention raised by Air India, for not continuing Air-hostesses in service beyond a particular age, was rejected by the Supreme Court in **Nergesh Meerza**[1], and it was observed:-

"….The next provision which has been the subject-matter of serious controversy between the parties, is the one contained in Regulation 46(*i*)(*c*). According to this provision, the normal age of retirement of an Air Hostess is 35 years which may at the option of the Managing Director be extended to 45 years subject to other conditions being satisfied. A similar regulation is to be found in the Rules made by the IAC to which we shall refer hereafter. The question of fixation of retirement age of an AH is to be decided by the authorities concerned after taking into consideration various factors such as the nature of the work, the prevailing conditions, the practice prevalent in other establishments and the like.

"……. It is, therefore, manifest that the factors to be considered must be relevant and bear a close nexus to the nature of the organisation and the duties of the employees. Where the authority concerned takes into account factors or circumstances which are inherently irrational or illogical or tainted, the decision fixing the age of retirement is open to serious scrutiny……

…….**Another line of reasoning which has been placed before us and which smacks of a most perverse and morbid approach is to be found in Para 9 of the counter-affidavit in Vol. II of the Paperbook where the following averments have been made:**

"With reference to para 30 of the affidavit, I repeat that Air Hostesses are recruited for providing attractive and pleasing service to passengers in a highly competitive field and

consequently stress is laid on their appearance, youth, glamour and charm."

We are rather surprised that similar arguments made before the two Tribunals seem to have found favour with them because at p. 204 (para 256) the Khosla Award having been carried away by the arguments of the Corporation made the following observations:

> "They have to deal with passengers of various temperaments, and a young and attractive air hostess is able to cope with difficult or awkward situations more competently and more easily than an older person with less personal prepossession."

We fail to see how a young and attractive AH would be able to cope with difficult or awkward situations more effectively than others because smartness or beauty cannot be the only hallmark of competency. Similar observations were made by the Mahesh Tribunal in the following terms:

> **"The management claims this on the ground that the cabin crew service has to be attractive to passengers."**

The argument that AHs should be young and attractive and should possess pleasing manners seems to suggest that AHs should by their sweet smiles and pleasant behaviour entertain and look after the passengers which cannot be done by women of older age. This argument seems to us to be based on pure speculation and an artificial understanding of the qualities of the fair sex and, if we may say so, it amounts to an open insult to the institution of our sacred womanhood. Such a morbid approach is totally against our ancient culture and heritage as a woman in our country occupies a very high and respected position in the society as a mother, a wife, a companion and a social worker. **It is idle to contend that young women with pleasing manners should be employed so as to act as show pieces in order to cater to the varied tastes of the passengers when in fact older women with greater experience and goodwill can look after the comforts of the passengers much better than a young woman can. Even if the Corporation had been swayed or governed by these considerations, it must immediately banish or efface the same from its approach. More particularly such observations coming from a prestigious Corporation like AI appear to be in bad taste and is proof positive of denigration of the role of women and a demonstration of male chauvinism and verily involves nay discloses an element of unfavourable bias against the fair sex which is palpably unreasonable and smacks of pure official arbitrariness….." (emphasis supplied).** }

Clause 4(c)ii) of the Medical Manual, which prevents access to employment, in the respondent Corporation, merely on the ground of the applicant being found to suffer from "Vitiligo" despite his fulfilling the physical and other standards prescribed, is arbitrary, unreasonable and ultravires Articles 14 and 16 of the Constitution of India.

Clause 4 (c)(ii) of the Medical Manual disentitles person afflicted with "Vitiligo" from being directly recruited to posts in the A.P.S.R.T.C. No rule, or provision, which disentitles persons already employed in the Corporation from continuing in service, despite their contracting "Vitiligo", after they have secured employment, is brought to our notice. Is this not discriminatory and in violation of Articles 14 and 16 of the Constitution, asks the petitioner?

At the heart of the prohibition of unfair discrimination is the recognition that under our Constitution all human beings, regardless of their position in society, must be accorded equal dignity. That dignity is impaired when a person is unfairly discriminated against. The determining factor regarding the unfairness of the discrimination is its impact on the person discriminated against. Relevant considerations in this regard include the position of the victim of the discrimination in society, the purpose sought to be achieved by the discrimination, the extent to which the right or interests of the victim of the discrimination have been affected, and whether the discrimination has impaired the human dignity of the victim. (**Mr. X, Indian Inhabitant, Vizianagaram Vs. Chairman, State Level Police Recruitment Board, Hyderabad**[13]).

Clause 4(c)(ii) of the Medical Manual undoubtedly discriminates, between those who

suffer from Vitiligo and are seeking appointment in the A.P.S.R.T.C. vis-à-vis those who have contracted this skin disorder after appointment in the Corporation, and falls foul of the equality clauses enshrined in Articles 14 and 16 of the Constitution of India. If all persons suffering from "Vitiligo" are to constitute one homogenous class, there cannot be a further classification between those already employed and those who seek employment. Persons afflicted with Vitiligo are vulnerable to discrimination on the basis of prejudice and unfounded assumptions. This is manifestly unfair. The constitutional right of the petitioner not to be unfairly discriminated against cannot be determined by ill-informed public perception regarding this skin disorder. Prejudice can never justify unfair discrimination. Having regard to all these considerations, denial of employment to the petitioner, only because he suffers from "Vitiligo" impaires his dignity and constitutes unfair discrimination. (**Mr. X, Indian Inhabitant**[13]). Since Clause 4(c)(ii) of the Medical Manual is patently arbitrary, irrational and discriminatory it is ultravires Articles 14 and 16 of the Constitution of India. As a result no person can be denied employment, in the respondent Corporation, solely on the ground that he suffers from "Vitiligo".

While the petitioner can no longer be denied employment solely on the ground that he is afflicted by "Vitiligo" as the prohibition in this regard, in Clause 4(c)(ii) of the Medical Manual, has been declared ultravires, that does not mean that he is entitled straightaway to be appointed as a Conductor in the A.P.S.R.T.C. While the respondents, in the counter affidavit, would submit that the petitioner suffered from defective vision because of de-pigmentation of choroide and retina, none of the medical reports, enclosed as part of the material papers filed along with the counter affidavit, make any reference to any visual examination being conducted. Clause III of the Medical Manual relates to vision test and provides that the special rules governing vision standards for candidates of various categories are as given in Annexure III. Separate vision standards are prescribed in Annexure III for conductors. It is only if an applicant satisfies these vision standards would he be entitled to be appointed as a "conductor" in the respondent – corporation. The medical examination of the petitioner was nearly seven years ago and before he is given orders of appointment the respondents would undoubtedly be justified in examining whether the petitioner presently satisfies the other medical standards prescribed for being appointed as a Conductor in the respondent Corporation, including the vision standards prescribed in Annexure III of the Medical Manual. The respondents are accordingly directed to verify whether the petitioner, in his present condition, complies with the prescribed medical requirements, (visual and other standards) and, in case he satisfies the required standards, appoint him as a Conductor in the respondent Corporation. The entire exercise in this regard shall be completed within a period of three months from the date of receipt of a copy of this order.

The writ petition is allowed. However, in the circumstances, without costs.

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B.PRAKASH RAO,J

Date: -11-2006

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RAMESH RANGANATHAN,J

Note:
L.R. Copy be marked
B/o
ASP/MRKR

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[1] 1981)4 SCC 335
[2] (1983(1) ALT 408
[3] AIR 1956 SC 520

[4] AIR 1962 SC 36
[5] (1967)2 SCR 29
[6] AIR 1974 SC 1
[7] (2001)7 SCC 708
[8] (2005)1 SCC 394
[9] (1998)7 SCC 676
[10] 1995 Suppl. 4 SCC 584
[11] (1961)2 SCR 931
[12] AIR 1997 SC 128
[13] 2006(2) ALT 82 (D.B.)